

REMARKS

Claims 35-36, 39, 42, 44-53, 55-57, 59-64, 66-77, 79, 81-85, and 87-101 remain in this application. Claims 1-34, 40, 41, 43, 48, 54, 65, 80 and 88-91 are cancelled. Claims 37, 38, 58, 59, 78, and 86 are withdrawn from consideration as directed to non-elected species of invention. Claims 35, 36, 39, 42, 44, 46, 49, 56, 57, 62, 66, 68, 74, 81 and 87 are amended. New Claims 92-101 are added. By these amendments, no new matter has been added.

The Examiner rejected Claims 40-41, 54 and 65 under 35 U.S.C. § 112, first paragraph (written description requirement). These claims have been cancelled without prejudice, and these rejections are therefore moot.

The Examiner rejected Claims 38, 56 and 59 under 35 U.S.C. § 112, second paragraph as being indefinite. These rejections are respectfully traversed. Claims 38 and 59 have been withdrawn from consideration. Claim 56 is amended to correct any lack of antecedent basis and is now considered sufficiently definite. These rejections should therefore be withdrawn.

Before responding to the Examiner's rejections in view of the prior art, a brief description of the present application is provided. The present invention provides a method and system for facilitating communications between a medical provider and a patient. More particularly, the invention provides a secure, web accessible interface to enable a patient to obtain information from a medical provider, such as medical records data, appointment scheduling data, and billing data. The system includes a web server that communicates with the patient via a web interface, a database server that sends and receives information to a plurality of databases, such as conventional Practice Management System (PMS) databases, and an application server that processes patient requests and delivers appropriate information to the patient through the web server. Prior to the invention, patients could only retrieve such information from the medical providers administrative support staff, who would in turn access proprietary databases that contained the requested data. Hence, the invention reduces the burden

on the medical provider while also providing enhanced service to the patient. None of the references of record teach or suggest such a system.

Applicant has amended the claims to clarify certain of these aspects of the invention. New Claims 92-101 are also directed to these aspects of the invention.

The Examiner rejected Claims 35, 36, 38-43, 54-57, 59-65, 71-77, 79-85 and 87-91 under 35 U.S.C. § 103(a) over Evans and Halamka; Claims 44-49 and 66-70 under 35 U.S.C. § 103(a) over Evans, Halamka and Bessette; Claim 50 under 35 U.S.C. § 103(a) over Evans, Halamka and Ralston; Claim 51 under 35 U.S.C. § 103(a) over Evans, Halamka and Cummings; and Claims 52 and 53 under 35 U.S.C. § 103(a) over Evans, Halamka, Cummings and Sackler. All of the foregoing rejections are respectfully traversed.

Evans discloses an electronic medical records system that provides a standardized record format into which data may be entered. The electronic medical records system is intended to only be accessed by medical professionals, and as such provides no mechanism for patients to access the system. The system disclosed in Evans is the type of back-office proprietary database into which the system of the present invention would interface. Moreover, the Evans system provides only medical records management, and does not also provide appointment scheduling and billing, which are generally maintained in other proprietary databases. Evans discloses no way to access all of these diverse proprietary databases and enable patient access to them via an easy to use web interface.

The Examiner acknowledged the deficiency of Evans, and proposed the combination with Halamka to make up for the deficiency. Halamka discloses a virtual consolidation of the hospital records with access via a web interface. More particularly, Halamka describes a system in which the legacy databases of plural hospitals are linked in order to permit greater access to and sharing of information. Nevertheless, Halamka still fails to disclose pertinent aspects of the present invention, and its combination with Evans is not availing in disclosing or suggesting the invention. In

particular, Halamka does not disclose any system that is accessible by patients in order to receive information from and provide information to their medical provider. Like Evans, the Halamka system is intended only to be accessed by medical professionals. Halamka describes a security system using hardware tokens in order to authenticate users (see page 3). Such a system is practical only with a limited number of participants, and is not practical with a system intended to be used by large numbers of the general public, e.g., the patient population of a typical medical service provider. Further, the information contained and accessed by the Halamka system is limited to medical records data. There is no attempt in Halamka to permit access to appointment scheduling and billing data; indeed, there would be no reason to access these separate databases since the intent of Halamka was only to permit medical professionals to share information regarding their patients. Finally, Halamka appears to describe a system in which the accessed databases are read-only, i.e., the system is used only as a research tool to access information in the databases. Halamka does not describe an interactive system in which patients could enter their own data as well as receive responses to inquiries.

Accordingly, there is no teaching or suggestion to combine the Evans and Halamka references, and even if such a teaching or suggestion were present, the proposed combination fails to disclose the claims of the invention. With respect to Claim 35, the proposed combination of reference fails to suggest or disclose any of the steps of:

- receiving a data request from a patient via a secure publicly accessible network connection;

- querying at least one database from a plurality of databases for via a database connectivity module, the plurality of databases containing medical records data, appointment scheduling data, and billing data pertaining to the patient;

- determining the access status of the patient;

selecting records on the at least one database that satisfy the data request and are accessible to the patient; and

presenting data to the patient from one or more selected data fields on the at least one database in accordance with one or more objects or templates via the secure publicly accessible network connection.

Likewise, with respect to Claim 56, the proposed combination of references fails to suggest or disclose a system for collecting and presenting patient data that operates in conjunction with at least one database to perform the functions recited above. Failing to disclose or suggest all the recited limitations, Evans and Halamaka therefore do not make out a *prima facie* case against independent Claims 35 and 56. The remaining claims are also allowable for at least the reason that they depend from allowable base claims. These rejections should therefore be withdrawn

None of the other references of record make up for these deficiencies. Bessette is cited merely for its disclosure of a password authentication system that is remote from the main medical database. Ralston et al. is cited merely for its disclosure of a system for scheduling appointments. Cummings, Jr. is cited merely for its disclosure of an integrated payment management system. Sackler et al. is cited merely for its disclosure of a system for tracking copayments and deductibles. The Examiner makes no attempt to show any teaching or suggestion for the proposed combination of references, and for that reason (in addition to the foregoing reasons) the rejections fail to establish a *prima facie* case of obviousness.

As reflected in the attached declaration of Frith Maier, the non-obviousness of the claims is further rebutted by the evidence of commercial success of the invention. Applicant presently offers software services to medical and dental professionals under the names Ortho SesameSM and Dental SesameSM that are covered by the claims of the patent application (Maier decl. ¶ 3). These services enable doctors and dentists to significantly improve their patient communications, resulting in reduced no-shows, staff administration time savings, and significant improvements in patient satisfaction. Since

their introduction, the Ortho SesameSM and Dental SesameSM services have been a tremendous commercial success (Maier decl. ¶ 8).

Both the Federal Circuit and district courts have repeatedly noted that commercial success of the commercial embodiment of an invention is uncontroverted evidence of non-obviousness and is entitled to fair weight. See, e.g., *Leviton Mfg. Co. v. Universal Sec. Instruments, Inc.*, 304 F. Supp. 2d 726, 752 (D. Md., 2004) (citing *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1391 (Fed. Cir. 1988)). The commercial success of the Ortho SesameSM and Dental SesameSM services are directly attributed to the claimed features of the invention. Customer surveys show overwhelmingly that patients most appreciate the ability to access their medical records, schedule their appointments, and monitor billing status and pay bills through the web browser interface (Maier decl. ¶ 9). These aspects of the services track directly with corresponding limitations of the independent claims—particularly the limitations that are distinct from the prior art references of record.

Moreover, the Federal circuit has repeatedly noted that commercial success can be established by customer testimony, and ample customer testimony has been provided here. See, e.g., *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 668 (Fed. Cir., 2000); *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 1351 (Fed. Cir., 2000); *Pro-Mold v. Great Lakes Plastics*, 75 F.3d 1568 (Fed. Cir., 1996); *Tate Access Floors Inc. v. Interface Architectural Resources*, 185 F. Supp. 2d 588, 604 (D. Md. 2002). For example, in *Winner Int'l Royalty Corp. v. Wang*, the Federal Circuit affirmed a finding of commercial success based on significant sales in the relevant market and a survey of customers indicating that the patented improvement was the reason they purchased the product. *Winner Int'l Royalty Corp.*, 202 F.3d at 1351. Furthermore, in *Pro-Mold v. Great Lakes*, the Federal Circuit noted that Pro-Mold's lack of previous experience in the relevant market combined with its high sales of the patented product provided an inference of a nexus between its commercial success and the patented invention and are thus probative evidence of non-obviousness. *Pro-Mold*, 75 F.3d at 1574. Finally, in

Tate Access Floors, Inc. v. Interface Architectural Res., Inc., a district court noted that affidavits from customers insisting on the particular product and noting that dealers were overjoyed by the product provided evidence of a nexus between the claimed invention and the commercial success of the commercial product. *Tate Access Floors, Inc.*, 185 F. Supp. 2d 588, 604 (D. Md. 2002)

Therefore, customer feedback regarding the Ortho SesameSM and Dental SesameSM services further supports attributing this commercial success to the claimed features of the product. For example, Dr. Curtis Sapp of Olympia WA stated “I think that patients observing their treatment online is a revolutionary idea. Sesame involves them in their treatment in a whole new way.” (Maier decl. ¶ 9). Similarly, Dr. Barbara Hershey of Durham NC stated: “In a month, we saved over 350 phone calls to the front desk, because our patients were able to check their appointment times and financial status on our web site.” (Maier decl. ¶ 9). Other like comments are presented in the Maier declaration, and may also be found on the Applicant’s website. This customer testimony supports the proposition that the commercial success of the services provided in accordance with this patent application, i.e., the Ortho SesameSM and Dental SesameSM services, was a direct result of the features claimed in this application. The evidence should therefore be accorded substantial weight. M.P.E.P. § 2144.08 II B. Thus, the long felt, but previously unmet need in the medical industry along with the commercial success, and broad acceptance by the industry of a service provided in accordance with the invention described in this patent application compel the conclusion that the Applicant’s invention is not obvious.

As further evidence of the non-obviousness of the invention, Applicant’s Ortho SesameSM and Dental SesameSM services have been slavishly copied by TeleVox, a Mobile AL company (see Maier decl. ¶ 11). TeleVox released T.Link in 2003—roughly three and a half years after Applicant released its software service. The Federal Circuit has recognized copying by others as objective evidence of non-obviousness. *Allen Archery, Inc. v. Browning Mfg. Co.*, 819 F.2d 1087, 1092 (Fed. Cir. 1987) (considering

copying, praise, unexpected results, and industry acceptance as indicators of non-obviousness); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 679 (Fed. Cir. 1988) (considering copying as an indicator of non-obviousness).

Lastly, in rejecting certain claims, the Examiner took official notice "that it was well known in the electronic medical arts to send customized messages to patients based on their conditions or personal data." Office Action, p. 10. Applicant respectfully disagrees. The present invention permits information integrated from multiple medical service providers to be provided to the patient via the Internet (see Maier decl. ¶¶ 5,6). This provides a benefit to the patient that could not have been accomplished previously using traditional methods. Should the Examiner persist with this view in any subsequent action on the merits, Applicant respectfully requests that the Examiner support this assertion of fact with evidence that may be considered by the Applicant.

For all of the reasons set forth above, the rejection of claims as obvious over the prior art should be withdrawn. Applicant respectfully submits that Claims 35-36, 39, 42, 44-53, 55-57, 59-64, 66-77, 79, 81-85, and 87-101 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited. If it would be helpful to placing this application in condition for allowance, Applicant encourages the Examiner to contact the undersigned counsel and conduct a telephonic interview.

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To the extent necessary, Applicant petitions the Commissioner for a three-month extension of time, extending to November 25, 2005, the period for response to the Office Action dated May 25, 2005. A check in the amount of \$905.00 is enclosed for the three-month extension of time (\$510.00) pursuant to 37 C.F.R. §1.17(a)(3) and for request for continued examination (RCE) (\$395.00) pursuant to 37 C.F.R. § 1.17(e). The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0639.

Respectfully submitted,



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Enclosure: Declaration of Frith Maier